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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CS(OS) 1257/2003

MINAKSHI NATH & ORS ..... Plaintiffs

Through: Mr. A.S. Chandhiok, Sr. Adv. with Ms. Shweta, Ms. Amita Sehgal Mathur and Mr. Satinder Singh, Advs.

Versus

KAILASH NATH ..... Defendant

Through: None.

AND

\+ CS(OS) 181/2004

VINITA NATH & ANR. ..... Plaintiffs

Through: Mr. A.S. Chandhiok, Sr. Adv. with Ms. Shweta, Ms. Amita Sehgal Mathur and Mr. Satinder Singh, Advs.

Versus

KAILASH NATH & ORS. .... Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **08.08.2016**

IAs No.1444/2016 & 9454/2016 in CS(OS) No.1257/2003 & IA No.9535/2016 in CS(OS) No.181/2004 (both of plaintiff/s for directions)

1. All these three applications seek correction of the common decree drawn in pursuance to the disposal of the two suits vide common judgment / order dated 7th November, 2007.

2. The senior counsel for the plaintiffs/applicants states that in view of IA No.9454/2016 in CS(OS) No.1257/2003 having been filed, IA No.1444/2016 in CS(OS) No.1257/2003 earlier filed is not pressed.

3. It is the contention of the senior counsel for the plaintiffs/applicants that the decree is not in consonance with the judgment / order dated 7th November, 2007.

4. On 7th November, 2007, applications under Order XXIII Rule 3 of Code of Civil Procedure, 1908 (CPC) in both the suits were before the Court and the suits were disposed of as compromised.

5. Though the decree which has been drawn up is in accordance with the settlement arrived at between the parties before the Mediation Cell and on the basis of which the compromise applications were filed but it is the contention of the senior counsel for the plaintiffs/applicants that the disposal of the suits vide judgment / order dated 7th November, 2007 is not in accordance with the settlement agreement signed before the Mediation Cell or the compromise application. It is argued that this Court on 7th November, 2007 did not find the settlement as arrived at before the Mediation Cell or as recorded in the application under Order XXIII Rule 3 of CPC to be lawful and accordingly modified the settlement.

6. The judgment / order dated 7th November, 2007 does not record that the settlement agreement or the compromise was not in accordance with law or was being substituted by some other compromise terms. *Prima facie* it appears that even if there is any variance in the settlement as recorded in the judgment / order dated 7th November, 2007 and the settlement agreement / compromise as contained in the applications, the same would not change the

settlement agreement / compromise terms as contained in the applications, as the differences if any in the recording by the Court of the terms thereof without expressing any finding that the settlement / compromise is not lawful or that the parties had agreed to vary the same, cannot amount thereto and would also not be a compromise within the meaning of Order XXIII Rule 3 of CPC.

7. However, since it is a family dispute, it is deemed appropriate to consider the matter, after issuing notice.

8. The judgment / order dated 7th November, 2007 makes the compromise subject to the outcome of CS(OS) No.1630/2006.

9. On enquiry, it is informed that CS(OS) No.1630/2006 is still pending and is listed next before the Court on 23rd September, 2016.

10. The senior counsel for plaintiffs/applicants states that the defendant in CS(OS) No.1257/2003 had also preferred a counter claim being CC No.1873/2003.

11. Issue notice to the defendants/non-applicants by all modes including *dasti* returnable on 23rd September, 2016.

12. Subject to the orders of Hon'ble the Judge-in-Charge, list these proceedings as well as CS(OS) No.1630/2006 before the same Bench on 23rd September, 2016.

RAJIV SAHAI ENDLAW, J.

AUGUST 08, 2016
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